

Eric A. Seitz, Attorney At Law
A LAW CORPORATION

April 19, 2021

Eric A. Seitz
Della A. Belatti
Gina Szeto-Wong
Jonathan M.F. Loo
Kevin A. Yolken

Honorable Wes Reber Porter
United States Magistrate Judge
District of Hawaii
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Re: Puana vs. Kealoha
Civil No. 16-00659 JMS-WRP
Trial Date: January 25, 2022
Discovery Cutoff: November 26, 2021

Dear Judge Porter:

As you know we recently noticed the oral depositions of Defendant Louis Kealoha, former Honolulu Mayor Kirk Caldwell, and outgoing HPD Chief Susan Ballard. We previously informed you and Judge Kurren as well as opposing counsel of our intentions to notice the depositions if and when the latest series of settlement discussions ended, so there certainly is no claim of surprise here. Other than general objections that the depositions will not produce relevant information, we are unaware of any specific objections that would warrant the issuance of a protective order in this situation.

Our immediate concerns are that by June 1st Louis Kealoha and two or three of the other named defendants will be leaving Hawaii to be incarcerated in mainland federal institutions. Once that happens there will be severe difficulties in scheduling and conducting any depositions in this litigation. Chief Ballard is scheduled to retire on June 1st so her availability after that date also may be more difficult to determine.

As to Chief Ballard, our principal areas of inquiry concern the unchecked powers of the Chief of Police that existed when Defendant Kealoha occupied that position and the lack of any oversight as to which Chief Ballard herself has testified in recent appearances before the Honolulu County Council and the Honolulu Police Commission. Despite widespread corruption within HPD and repeated violations of our clients' civil and constitutional rights -- in which fifty or more HPD officers participated at the direction of Chief Kealoha -- the City and County of Honolulu thus far has done nothing to investigate how HPD resources and personnel can so dramatically be weaponized by the sitting Chief nor taken steps to prevent any reoccurrences. Indeed, Chief Ballard recently recounted how -- at the direction of the Mayor's staff -- similarly unwarranted surveillance was conducted by HPD in the midst of a personnel dispute with a former Medical Examiner, Dr. Happy, and that there is no policy or practice in place to restrain her or successor HPD Chiefs from engaging in the same courses of action in the future. In a case in which we are alleging that then Chief Kealoha was, both in fact and law, the principal policy maker and actor with respect to law enforcement activities of the City and County of

Hon. Wes Reber Porter
April 19, 2021
Page Two

Honolulu, it certainly is relevant to establish from the current Chief how that authority is derived, what is its actual scope, and how by his or her acts and omissions the HPD Chief acts in behalf of and binds the City and County of Honolulu when it comes to creating liabilities of the sort at issue in this case.

Mayor Caldwell served for eight years during which former Chief Kealoha and his wife, Deputy Prosecuting Attorney Katherine Kealoha, corrupted the Honolulu Police Department into their own private agency to terrorize our clients who were then engaged against them in a civil dispute. We want to know what kind of oversight, if any, the former Mayor and his staff exercised that allowed or facilitated the course of conduct in which so many employees of Honolulu City and County agencies were involved. Commencing in 2014, the then Executive Director of the City Ethics Commission, Charles W. Totto, initially raised issues concerning Mayor Caldwell's fund-raising practices which then resulted in a series of hostile reactions against the Ethics Commission led by senior members of the Mayor's cabinet, including his Corporation Counsel. Subsequently, in 2014, Mr. Totto and his staff investigator, former HPD Officer Leitha DeCaires, initiated ethics inquiries into the misconduct of Louis and Katherine Kealoha based upon reports of financial transactions, misuse of City resources, and conflicts of interest amid on-going litigation involving them. Mayor Caldwell and his senior staff then embarked upon a concerted, deliberate, and ultimately successful campaign to attack the Ethics Commission, remove Mr. Totto, and fire Ms. DeCaires in order to support and assist the Kealohas.

On December 19, 2016, Louis Kealoha received a "target letter" informing him that he was the subject of a federal grand jury investigation. In response to that letter, Mayor Caldwell and his senior staff repeatedly met with the Honolulu Police Commission and Louis Kealoha's lawyers to agree upon a "settlement package" by which Kealoha retired and was paid a \$250,000 bonus. In that period of time, Mayor Caldwell continued to insist, privately and publically, that Louis Kealoha was innocent and would not be indicted without conducting any investigation or inquiry whatsoever. Thereafter, when the indictment was issued, Mayor Caldwell supported Louis Kealoha's request to be provided legal representation in the criminal matter at no cost to Mr. Kealoha himself. In granting the request for legal representation, on the advice of the Corporation Counsel, the Honolulu Police Commission found that the acts alleged in the indictment were required and/or work-related activities, incident to his police duties and responsibilities, and engaged in at a place where Kealoha was authorized to be in order to perform his job duties and responsibilities.

Immediately following the Kealohas' convictions in federal court, the Mayor began to distance himself and stated publically that now justice was done, and everyone could move forward. He made no efforts to inquire about the harm done to the victims or to address that harm, and he took no steps to determine how the Kealohas were able to weaponize the Honolulu Police Department to the degree that the evidence overwhelmingly demonstrated and/or to prevent it from happening again.

In sum, former Mayor Caldwell has extensive information bearing upon the City and County of Honolulu's liabilities asserted in this litigation. He was an actor in several critical events supporting the Kealohas and seeking to cover up their activities. Although he has not received a target letter, unlike his Corporation Council Donna Leong, it may well be that former Mayor Caldwell will assert his rights against self-incrimination if and when we depose him, but that does not affect our right –

Hon. Wes Reber Porter
April 19, 2021
Page Three

indeed our obligation – to place him under oath and determine his role and the scope of his knowledge about the critical events in this case.

For all of the foregoing reasons we request that any motions to quash the subpoenas and notice of deposition for Louis Kealoha, Kirk Caldwell, and Susan Ballard be denied.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'E. Seitz', written over the closing 'Sincerely yours,'.

Eric A. Seitz
Jonathan M.F. Loo

cc Stephen Atwell, Esq.
Audrey Stanley, Esq.
Deputies Corporation Counsel